

AMENDED IN SENATE DECEMBER 15, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE MARCH 31, 2009

**SENATE BILL**

**No. 650**

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**Introduced by Senator Yee**

(Coauthor: Assembly Member ~~Hill~~ Portantino)

February 27, 2009

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~~An act relating to real property, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 8547.10 and 8547.12 of the Government Code, relating to improper governmental activities.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 650, as amended, Yee. ~~Real property: City of Half Moon Bay. Disclosure of improper governmental activities: state colleges and universities: damages.~~

*Existing law, the California Whistleblower Protection Act, authorizes a California State University or University of California employee or applicant for employment to have an available action for damages caused by intentional acts of reprisal, retaliation, threats, or coercion only under specified conditions.*

*This bill would also authorize an available action for damages, once a complaint is filed with a specified university officer, if the California State University or University of California either reached a decision, or failed, within time limits established by the trustees or regents, respectively, to reach a decision regarding the complaint. This bill would state that these provisions are not intended to prohibit an injured*

*party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months.*

~~The Bergeson-Peace Infrastructure and Economic Development Bank Act generally sets forth the duties and authority of the California Infrastructure and Economic Development Bank in administering various programs for economic development activities in the state. Bank activities may be funded through the California Infrastructure Bank Fund, which is continuously appropriated.~~

~~This bill would require the bank to loan \$10,000,000 to the City of Half Moon Bay to purchase certain property known as the Beachwood Property to assist the city relating to its settlement of a specified case, which would result in an appropriation.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 8547.10 of the Government Code is
- 2     amended to read:
- 3     8547.10. (a) A University of California employee, including
- 4     an officer or faculty member, or applicant for employment may
- 5     file a written complaint with his or her supervisor or manager, or
- 6     with any other university officer designated for that purpose by
- 7     the regents, alleging actual or attempted acts of reprisal, retaliation,
- 8     threats, coercion, or similar improper acts for having made a
- 9     protected disclosure, together with a sworn statement that the
- 10    contents of the written complaint are true, or are believed by the
- 11    affiant to be true, under penalty of perjury. The complaint shall be
- 12    filed within 12 months of the most recent act of reprisal complained
- 13    about.
- 14    (b) Any person who intentionally engages in acts of reprisal,
- 15    retaliation, threats, coercion, or similar acts against a University
- 16    of California employee, including an officer or faculty member,
- 17    or applicant for employment for having made a protected
- 18    disclosure, is subject to a fine not to exceed ten thousand dollars
- 19    (\$10,000) and imprisonment in the county jail for up to a period
- 20    of one year. Any university employee, including an officer or

1 faculty member, who intentionally engages in that conduct shall  
2 also be subject to discipline by the university.

3 (c) In addition to all other penalties provided by law, any person  
4 who intentionally engages in acts of reprisal, retaliation, threats,  
5 coercion, or similar acts against a university employee, including  
6 an officer or faculty member, or applicant for employment for  
7 having made a protected disclosure shall be liable in an action for  
8 damages brought against him or her by the injured party. Punitive  
9 damages may be awarded by the court where the acts of the  
10 offending party are proven to be malicious. Where liability has  
11 been established, the injured party shall also be entitled to  
12 reasonable attorney's fees as provided by law. ~~However, any An~~  
13 ~~action for damages shall not be available to the injured party unless~~  
14 ~~only if the injured party has first filed a complaint with the~~  
15 ~~university officer identified pursuant to subdivision (a), and the~~  
16 ~~university has failed either reached a decision regarding the~~  
17 ~~complaint, or failed, within the time limits established by the~~  
18 ~~regents, to reach a decision regarding that complaint within the~~  
19 ~~time limits established for that purpose by the regents. the~~  
20 ~~complaint. Nothing in this section is intended to prohibit the injured~~  
21 ~~party from seeking a remedy if the university has not satisfactorily~~  
22 ~~addressed the complaint within 18 months.~~

23 (d) This section is not intended to prevent a manager or  
24 supervisor from taking, directing others to take, recommending,  
25 or approving any personnel action or from taking or failing to take  
26 a personnel action with respect to any university employee,  
27 including an officer or faculty member, or applicant for  
28 employment if the manager or supervisor reasonably believes any  
29 action or inaction is justified on the basis of evidence separate and  
30 apart from the fact that the person has made a protected disclosure.

31 (e) In any civil action or administrative proceeding, once it has  
32 been demonstrated by a preponderance of the evidence that an  
33 activity protected by this article was a contributing factor in the  
34 alleged retaliation against a former, current, or prospective  
35 employee, the burden of proof shall be on the supervisor, manager,  
36 or appointing power to demonstrate by clear and convincing  
37 evidence that the alleged action would have occurred for legitimate,  
38 independent reasons even if the employee had not engaged in  
39 protected disclosures or refused an illegal order. If the supervisor,  
40 manager, or appointing power fails to meet this burden of proof

1 in an adverse action against the employee in any administrative  
2 review, challenge, or adjudication in which retaliation has been  
3 demonstrated to be a contributing factor, the employee shall have  
4 a complete affirmative defense in the adverse action.

5 (f) Nothing in this article shall be deemed to diminish the rights,  
6 privileges, or remedies of any employee under any other federal  
7 or state law or under any employment contract or collective  
8 bargaining agreement.

9 *SEC. 2. Section 8547.12 of the Government Code is amended*  
10 *to read:*

11 8547.12. (a) A California State University employee, including  
12 an officer or faculty member, or applicant for employment may  
13 file a written complaint with his or her supervisor or manager, or  
14 with any other university officer designated for that purpose by  
15 the trustees, alleging actual or attempted acts of reprisal, retaliation,  
16 threats, coercion, or similar improper acts for having made a  
17 protected disclosure, together with a sworn statement that the  
18 contents of the written complaint are true, or are believed by the  
19 affiant to be true, under penalty of perjury. The complaint shall be  
20 filed within 12 months of the most recent act of reprisal complained  
21 about.

22 (b) Any person who intentionally engages in acts of reprisal,  
23 retaliation, threats, coercion, or similar acts against a California  
24 State University employee, including an officer or faculty member,  
25 or applicant for employment for having made a protected  
26 disclosure, is subject to a fine not to exceed ten thousand dollars  
27 (\$10,000) and imprisonment in the county jail for up to a period  
28 of one year. Any university employee, including an officer or  
29 faculty member, who intentionally engages in that conduct shall  
30 also be subject to discipline by the university.

31 (c) In addition to all other penalties provided by law, any person  
32 who intentionally engages in acts of reprisal, retaliation, threats,  
33 coercion, or similar acts against a university employee, including  
34 an officer or faculty member, or applicant for employment for  
35 having made a protected disclosure shall be liable in an action for  
36 damages brought against him or her by the injured party. Punitive  
37 damages may be awarded by the court where the acts of the  
38 offending party are proven to be malicious. Where liability has  
39 been established, the injured party shall also be entitled to  
40 reasonable attorney's fees as provided by law. ~~However, any An~~

1 action for damages shall ~~not~~ be available to the injured party ~~unless~~  
2 *only if* the injured party has first filed a complaint with the  
3 university officer identified pursuant to subdivision (a), and the  
4 university has ~~failed~~ *either reached a decision regarding the*  
5 *complaint, or failed, within the time limits established by the*  
6 *trustees, to reach a decision regarding that the complaint within*  
7 ~~the time limits established for that purpose by the trustees.~~ Nothing  
8 in this section is intended to prohibit the injured party from seeking  
9 a remedy if the university has not satisfactorily addressed the  
10 complaint within 18 months.

11 (d) This section is not intended to prevent a manager or  
12 supervisor from taking, directing others to take, recommending,  
13 or approving any personnel action, or from taking or failing to take  
14 a personnel action with respect to any university employee,  
15 including an officer or faculty member, or applicant for  
16 employment if the manager or supervisor reasonably believes any  
17 action or inaction is justified on the basis of evidence separate and  
18 apart from the fact that the person has made a protected disclosure.

19 (e) In any civil action or administrative proceeding, once it has  
20 been demonstrated by a preponderance of the evidence that an  
21 activity protected by this article was a contributing factor in the  
22 alleged retaliation against a former, current, or prospective  
23 employee, the burden of proof shall be on the supervisor, manager,  
24 or appointing power to demonstrate by clear and convincing  
25 evidence that the alleged action would have occurred for legitimate,  
26 independent reasons even if the employee had not engaged in  
27 protected disclosures or refused an illegal order. If the supervisor,  
28 manager, or appointing power fails to meet this burden of proof  
29 in an adverse action against the employee in any administrative  
30 review, challenge, or adjudication in which retaliation has been  
31 demonstrated to be a contributing factor, the employee shall have  
32 a complete affirmative defense in the adverse action.

33 (f) Nothing in this article shall be deemed to diminish the rights,  
34 privileges, or remedies of any employee under any other federal  
35 or state law or under any employment contract or collective  
36 bargaining agreement.

37 (g) If the provisions of this section are in conflict with the  
38 provisions of a memorandum of understanding reached pursuant  
39 to Chapter 12 (commencing with Section 3560) of Division 4 of

1 Title 1, the memorandum of understanding shall be controlling  
2 without further legislative action.

3 ~~SECTION 1. (a) Notwithstanding subdivision (d) of Section~~  
4 ~~63050 of the Government Code, the Infrastructure and Economic~~  
5 ~~Development Bank shall loan ten million dollars (\$10,000,000) to~~  
6 ~~the City of Half Moon Bay pursuant to the procedures specified~~  
7 ~~in Article 3 (commencing with Section 63040) of Chapter 2 of~~  
8 ~~Division 1 of Title 6.7 of the Government Code to enable the city~~  
9 ~~to purchase certain property known as the Beachwood Property.~~

10 ~~(b) This loan specified in subdivision (a) is made to assist the~~  
11 ~~City of Half Moon Bay relating to its settlement agreement in the~~  
12 ~~case of Yamagiwa v. City of Half Moon Bay (N.D. Cal. 2007) 523~~  
13 ~~F. Supp.2d 1036 involving certain property known as the~~  
14 ~~Beachwood Property in the City of Half Moon Bay.~~

15 ~~(c) Prior to the disbursement of any funds, the City of Half~~  
16 ~~Moon Bay shall obtain an independent appraisal of the Beachwood~~  
17 ~~Property that conforms to the Uniform Standards of Professional~~  
18 ~~Appraisal Practice.~~

19 ~~SEC. 2. This act is an urgency statute necessary for the~~  
20 ~~immediate preservation of the public peace, health, or safety within~~  
21 ~~the meaning of Article IV of the Constitution and shall go into~~  
22 ~~immediate effect. The facts constituting the necessity are:~~

23 ~~In order to timely provide essential relief to the City of Half~~  
24 ~~Moon Bay as a result of the settlement agreement in the case of~~  
25 ~~Yamagiwa v. City of Half Moon Bay (N.D. Cal. 2007) 523 F.~~  
26 ~~Supp.2d 1036, it is necessary that this act take effect immediately.~~